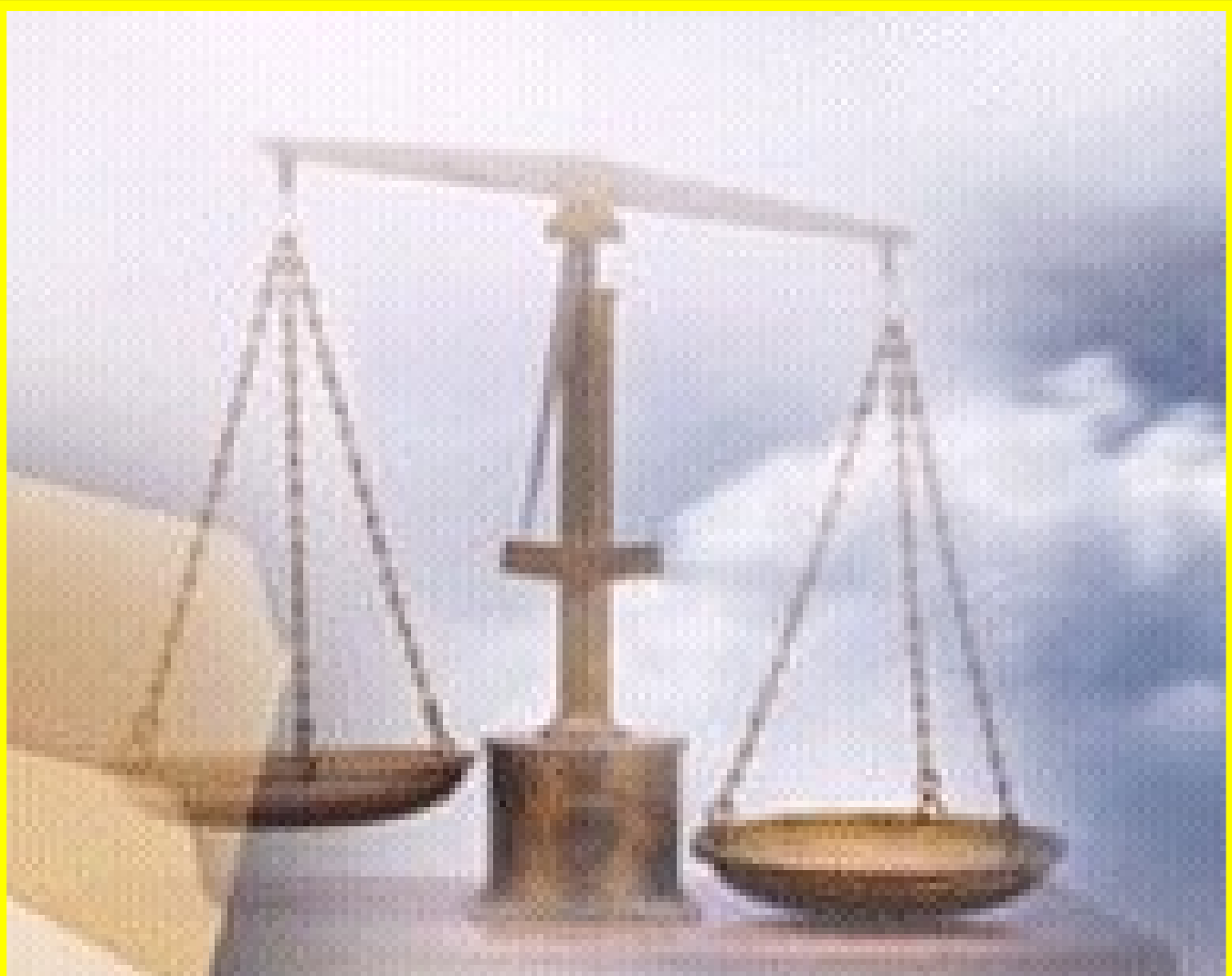




Conflicts of Interest



References





18 U.S.C. 201, 202, 203,
205, 206, 207, 208, 209



5 C.F.R. 2635,
Subparts D, E, F



5 C.F.R. 2640





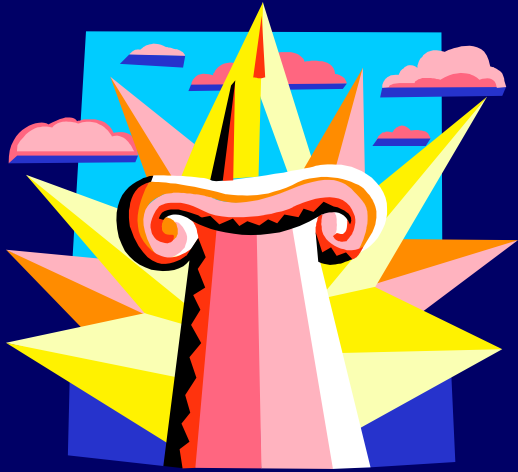
DoD 5500.7-R Chapters 2 & 5





www.oge.gov





Background

- ◆ Applies to Executive Branch Employees
- ◆ Purpose: Maintain Public Trust & Confidence



General Principle



Federal employees may not
take official action in
matters in which they have
a personal interest



“Conflict of Interest”

A personal interest or relationship, as defined by law or regulation, that conflicts with the faithful performance of official duty



- ◆ The Primary Conflicts of Interest Statute

- ◆ What the Statute Says

- ◆ What the Statute Means

- ◆ Definitions



An employee is prohibited from
participating personally & substantially
in an official capacity in any
particular matter
in which, to his knowledge, he or any
person whose interests are imputed to
him under this statute has a
financial interest,
if the particular matter will have a
direct & predictable
effect on that interest



“Particular Matter”

A **particular matter** is one that is focused upon the interests of specific persons, or a discrete & identifiable class of persons.

It does not extend to broad policy options or considerations directed toward the interest of a large & diverse group of personnel



Participate Personally & Substantially

◆ **Participate**

decision, approval, recommendation, investigation or rendering advice

◆ **Personally**

directly, & includes the participation of subordinate when actually directed by Government employee

◆ **Substantially**

of significance to the matter



Financial Interest

A financial interest is any current or contingent ownership, equity, or security interest in real or personal property or a business. It does not include future interest.



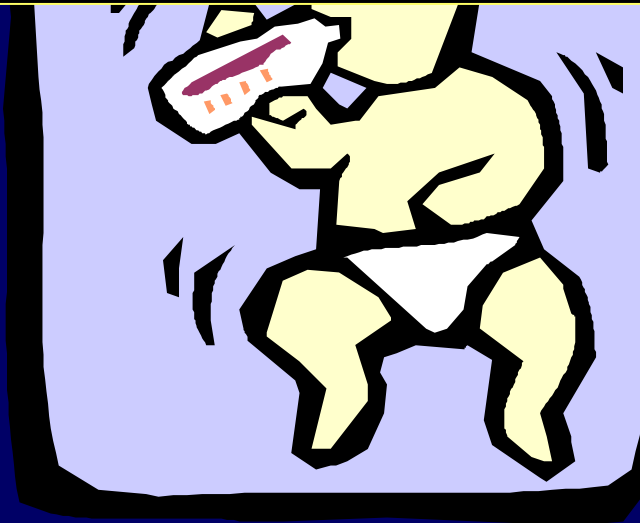
TEST

Is there a real possibility that the Federal employee may gain or lose as a result of developments in or resolution of the matter?





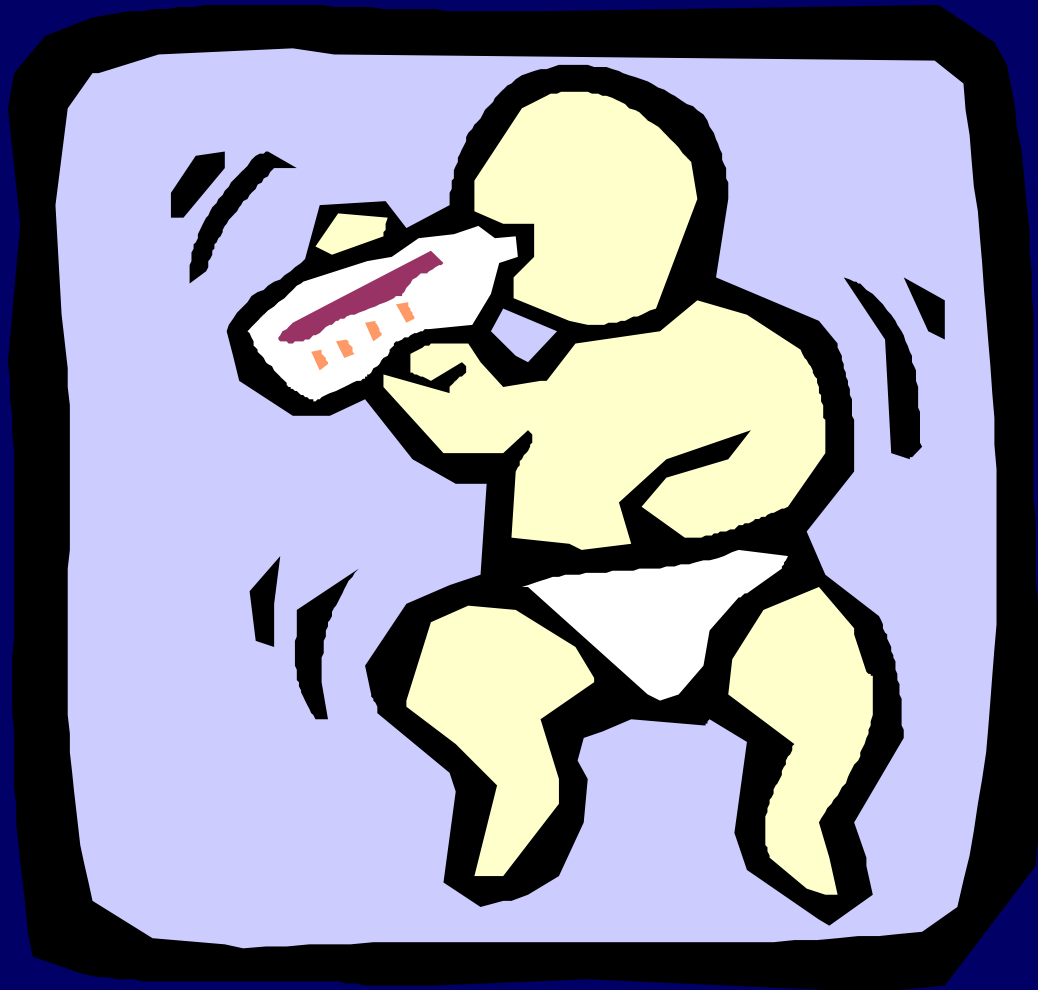
Imputed Interests





Spouse





Minor children





An organization in which the employee serves as officer, etc.





An organization with whom the
employee is negotiating for
employment



Direct & Predictable Effect

◆ **Direct:**

A close causal link between any decision or action in the matter & any expected effect of the matter on the financial interest



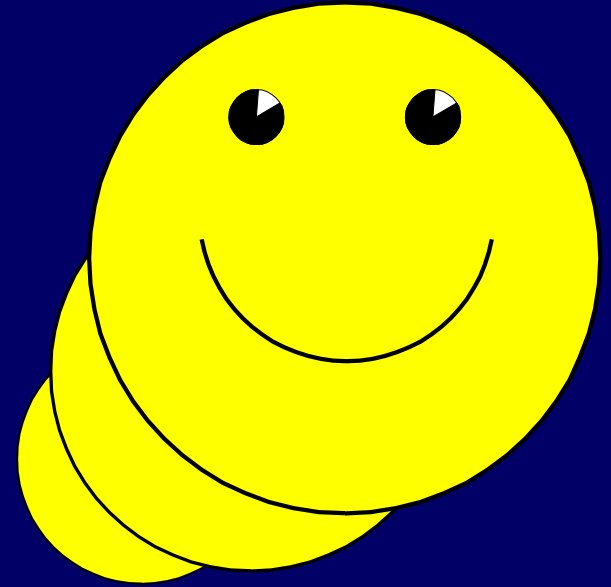
Direct & Predictable Effect

◆ **Predictable:**

a real, as opposed to speculative possibility that the matter will affect the financial interest (magnitude of gain is immaterial)



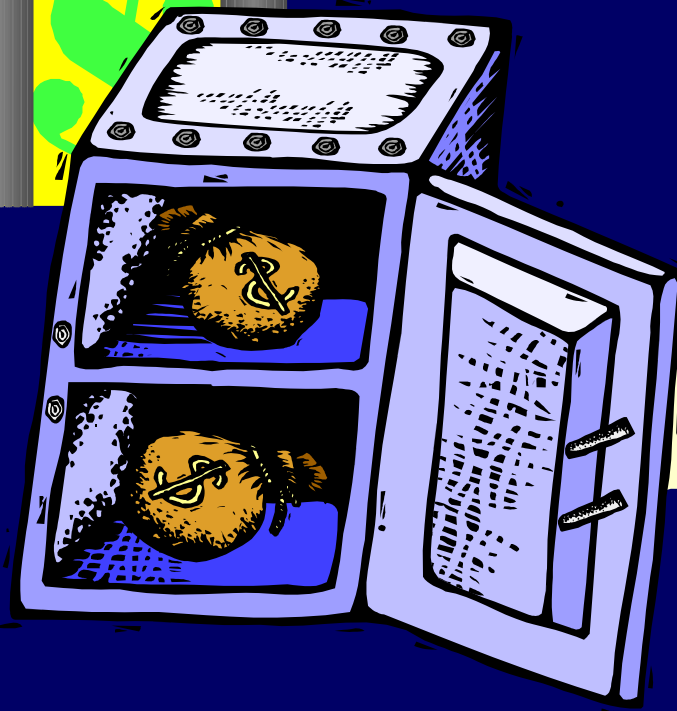
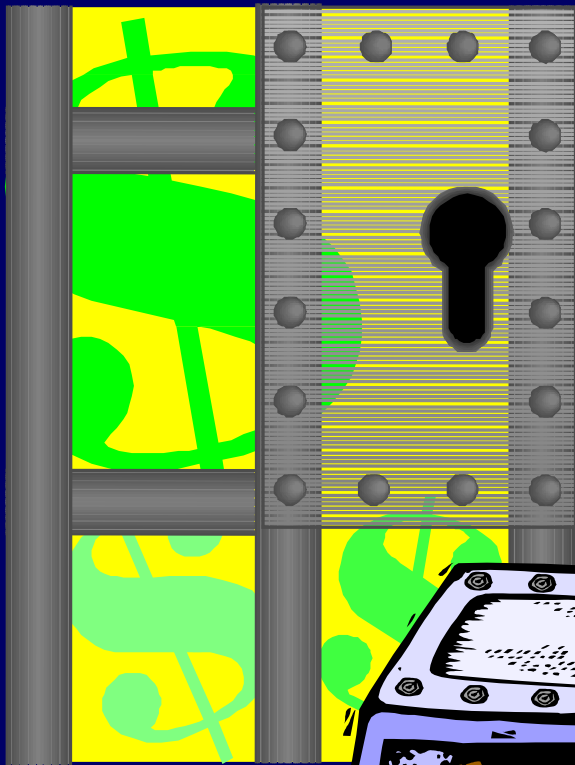
Resolution of a Conflict of Interest



- ◆ Disqualification
- ◆ Reassignment
- ◆ Change of Duties
- ◆ Divestiture of the Financial Interest
- ◆ Regulatory Exemptions
- ◆ Individual Waiver
- ◆ Waiver for Special Govt Employees

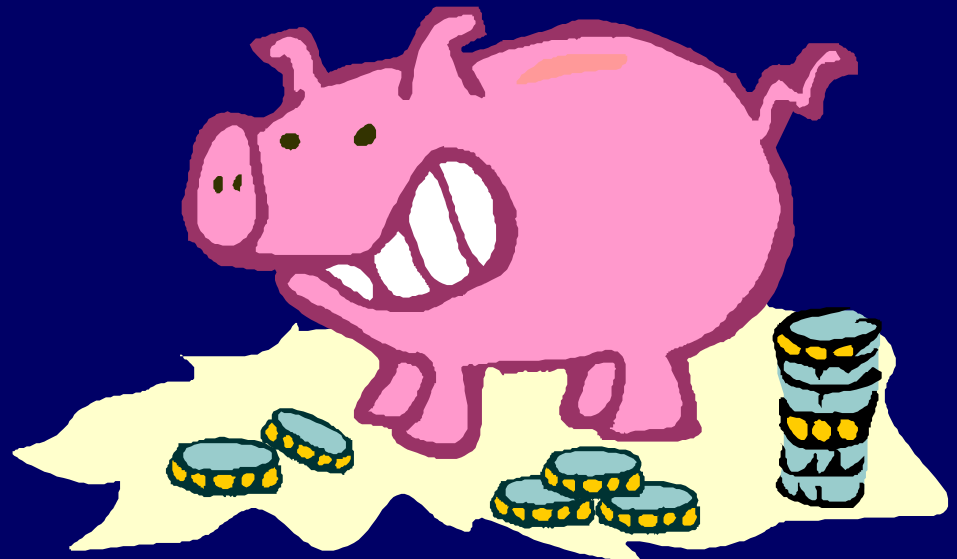


Regulatory Exemptions



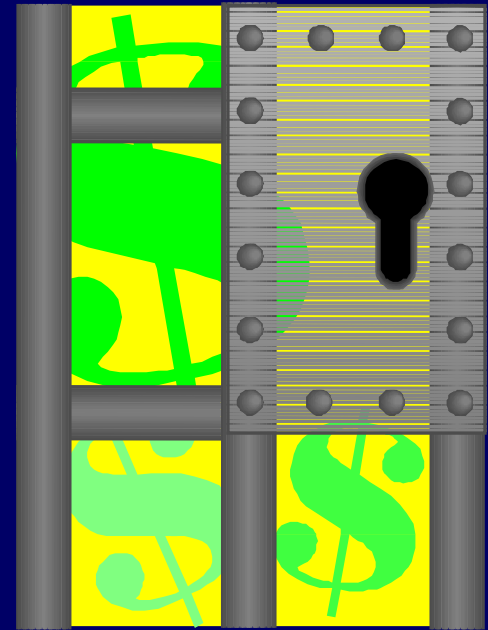
Pooled Investments

- ◆ Diversified Mutual Funds
- ◆ Sector Mutual Funds
- ◆ Employee Benefit Plans

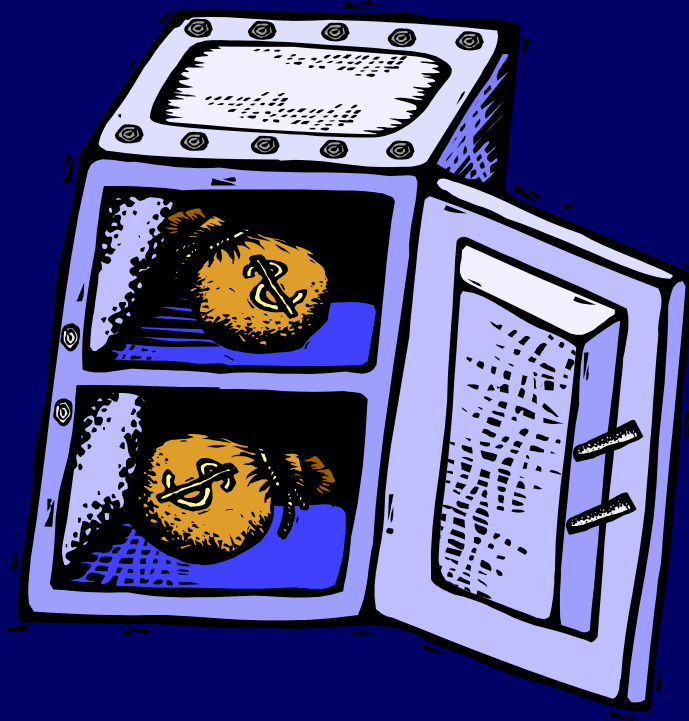


Securities

- ◆ De Minimis
- ◆ Short Term Federal Securities
- ◆ Securities Owned by Tax Exempt Orgs.
- ◆ General Partners



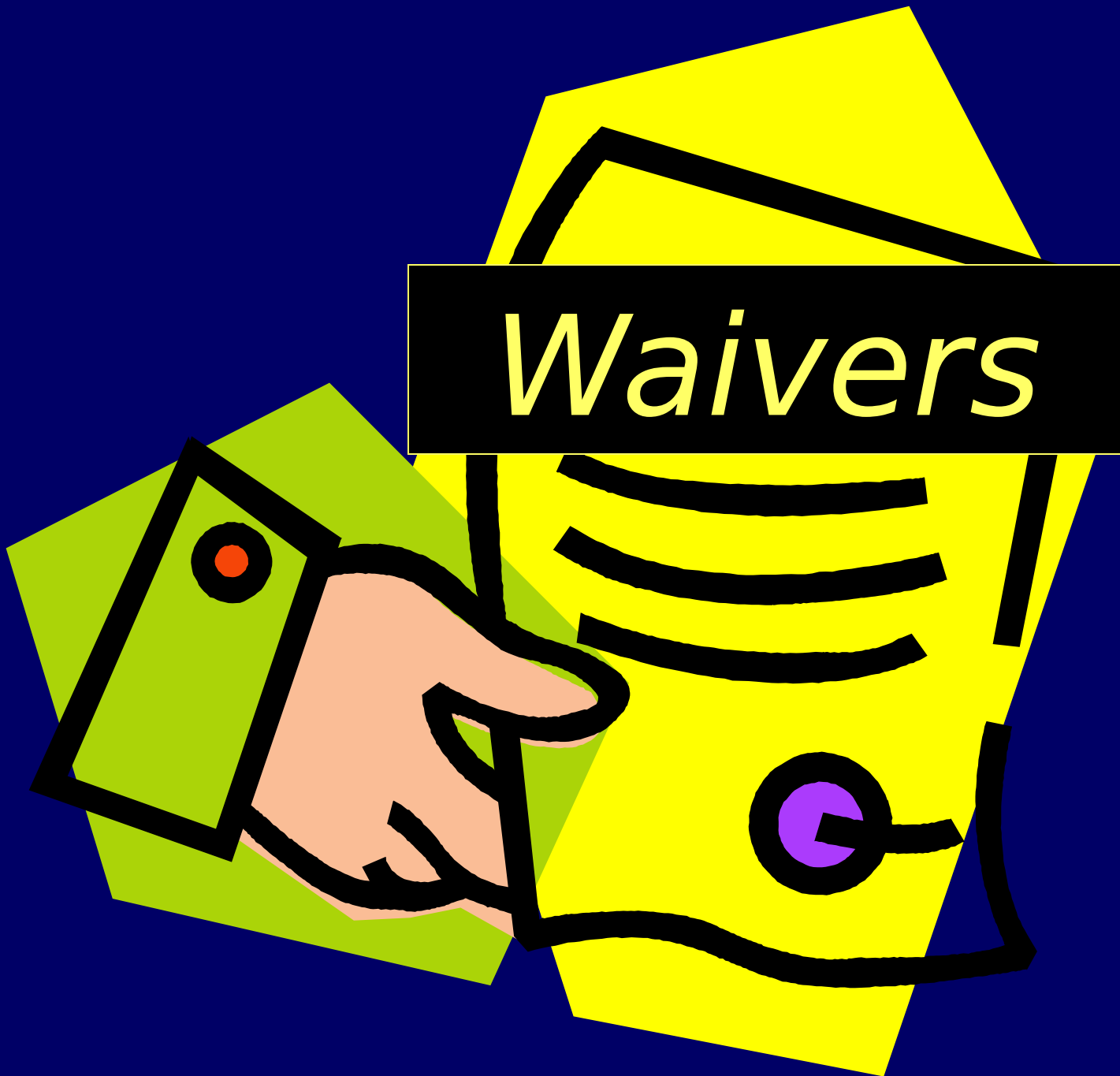
Misc

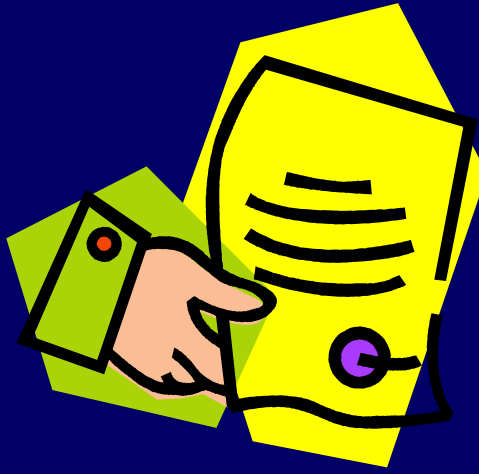


- ◆ Hiring Decisions
- ◆ Leave of Absence
- ◆ Multi-Campus Inst.
- ◆ Official Duties
- ◆ Commercial Discounts
- ◆ Mutual Insurance Co.
- ◆ Special Govt. E-ees
- ◆ Federal Reserve Dir.
- ◆ Medical Products



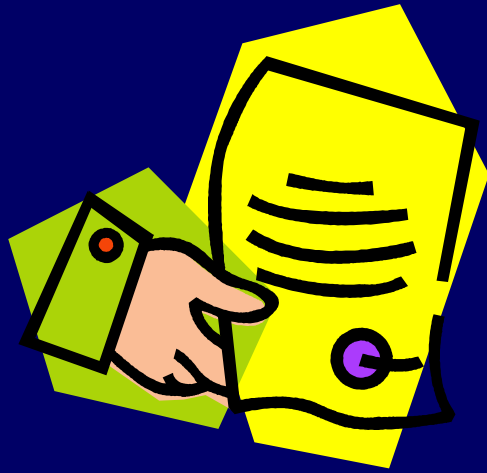
Waivers





*18 U.S.C. 208 (b) (1):
Individual Waiver*

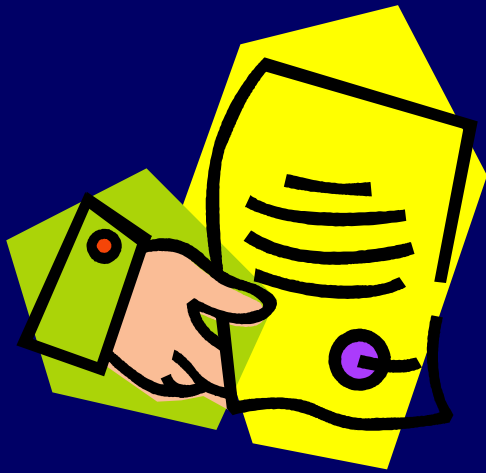
Individual Waiver



18 U.S.C. 208 (b) (1): Requirements

- ◆ Full disclosure
- ◆ Issued in writing
- ◆ Describe the interest, the matter, e-ees role, & limitations on employee's ability to act

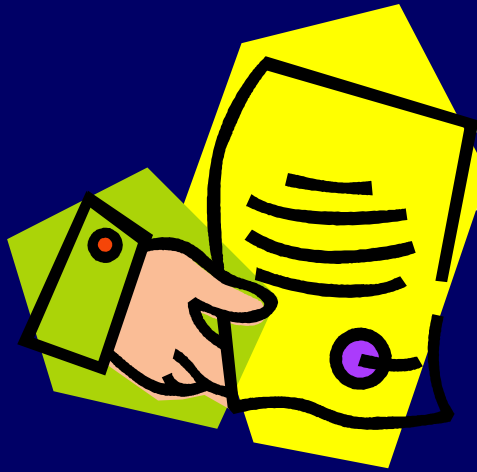




18 U.S.C. 208 (b) (1): Factors

- ◆ The type of interest that is creating the disqualification
- ◆ The identity of the person / relationship
- ◆ The dollar value of the disqualifying financial interest

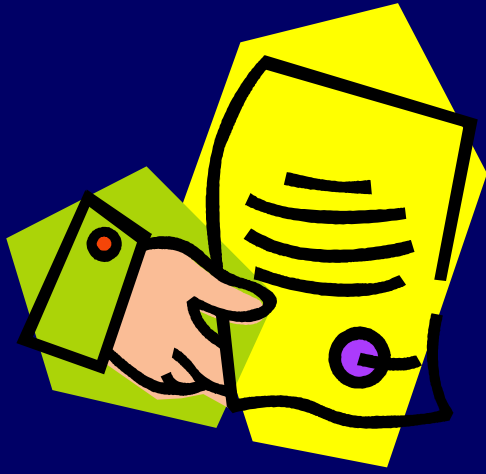




18 U.S.C. 208 (b) (1): Factors

- ◆ Value in relation to individual's total assets
- ◆ Nature & importance of employee's role
- ◆ Other factors
- ◆ Need to consult with OGE when practicable

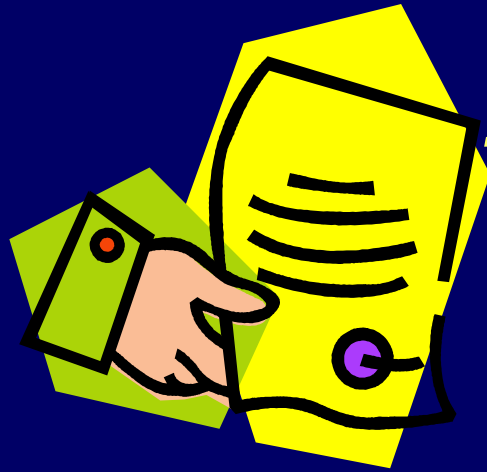




18 U.S.C. 208 (b) (3): Application

Applies to Special
Government Employees
who serve on advisory
committees

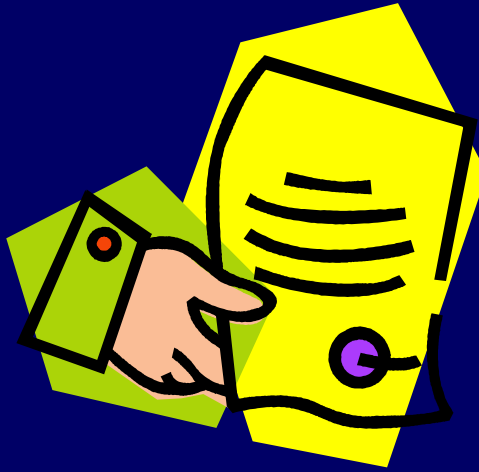




18 U.S.C. 208 (b) (3): Requirements

- ◆ Advisory committee must be a FACA
- ◆ Waiver issued in writing by appointing official
- ◆ Need for individual must outweigh conflict
- ◆ Facts must be fully described in the waiver

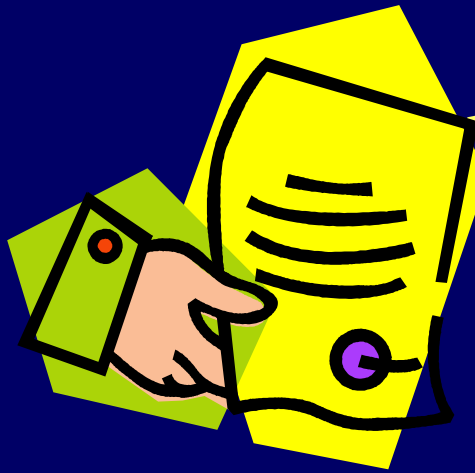




18 U.S.C. 208 (b) (3): Requirements

- ◆ Waiver should describe limitations on employee
- ◆ Waiver must be issued prior to taking action
- ◆ Waiver may apply to present & future financial interest

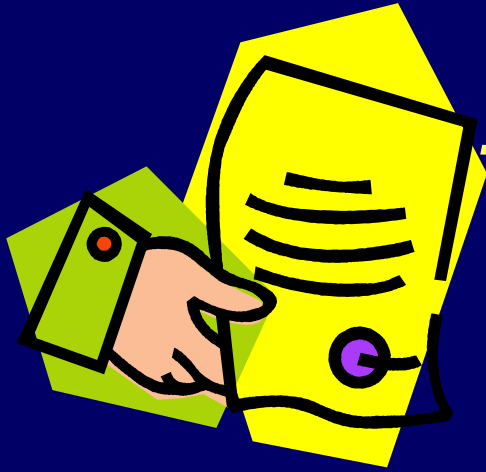




18 U.S.C. 208 (b) (3): Factors to Consider

- ◆ Type of interest that creates disqualification
- ◆ Identity of person whose interest is involved
- ◆ Uniqueness of individual's qualifications
- ◆ Dollar value of disqualifying financial interest





18 U.S.C. 208 (b) (3): Factors to Consider

- ◆ Value of the financial instrument involved
- ◆ Extent to which disqualifying financial interest will be affected
- ◆ Need to consult with OGE



Appearances



Goals

- ◆ Identify circumstances that raise most significant appearance problems
- ◆ Decide when employee is required to determine whether impartiality could be questioned
- ◆ Decide when an agency may make an independent determination of impartiality
- ◆ Determine when employee is required to obtain agency authorization before participating



5 C.F.R. 2635.502

Situations when 208 does not bar participation, but when an employee should consider whether circumstances would cause a reasonable person to question his impartiality if he participated in a particular matter

Circumstance #1

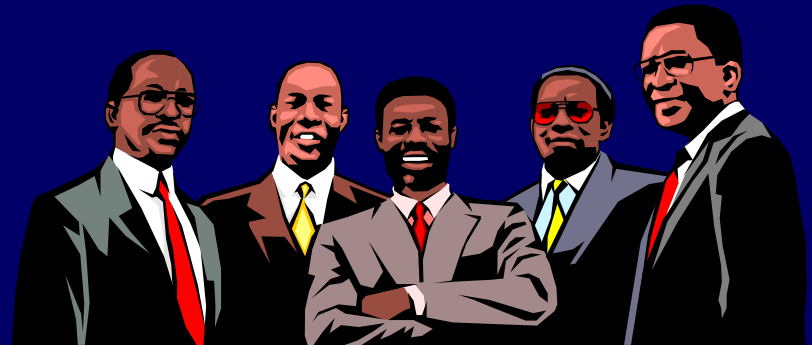


- ◆ A particular matter involving specific parties,
- ◆ is likely to have a direct and predictable effect,
- ◆ on the financial interest of a member of his household



Circumstance #2

- ◆ A person with whom he has a “covered relationship”
- ◆ Is or represents a party to,
- ◆ A particular matter involving specific parties



Covered Relationships

- ◆ Members of household
- ◆ Relatives (close personal relationship)
- ◆ Persons, organizations, entities, that:
 - Have or seek some business relationship
 - Spouse, parent or dep. child seeking employment
 - Employee served as officer, director, trustee, employee, partner in last year
 - Employee is “active participant”





Catch-All's: Number 1

An employee who is concerned that circumstances other than those described would raise a question regarding his impartiality should use this process



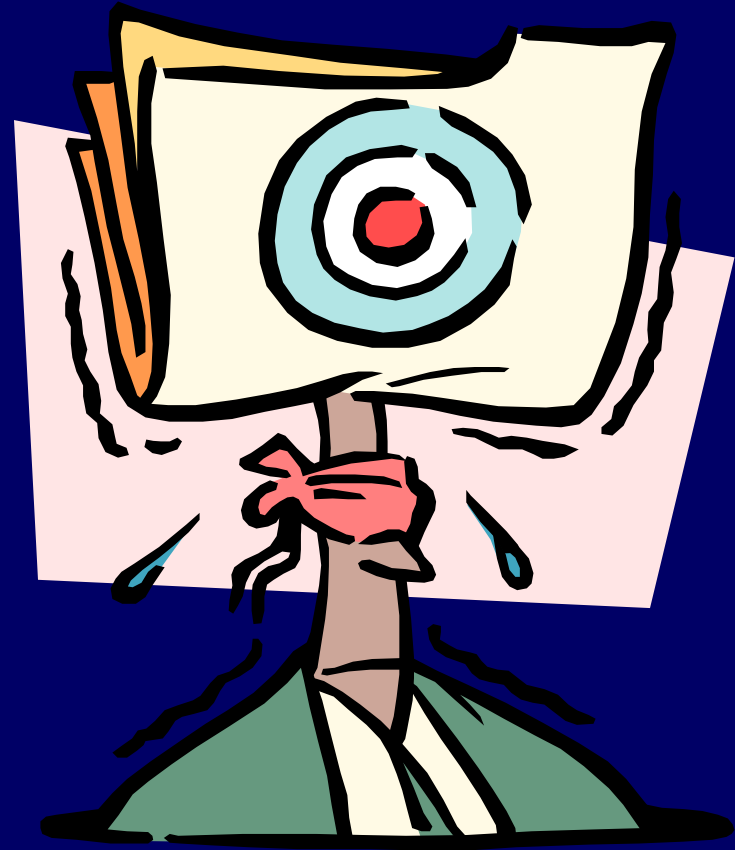
Catch-All's: Number 2

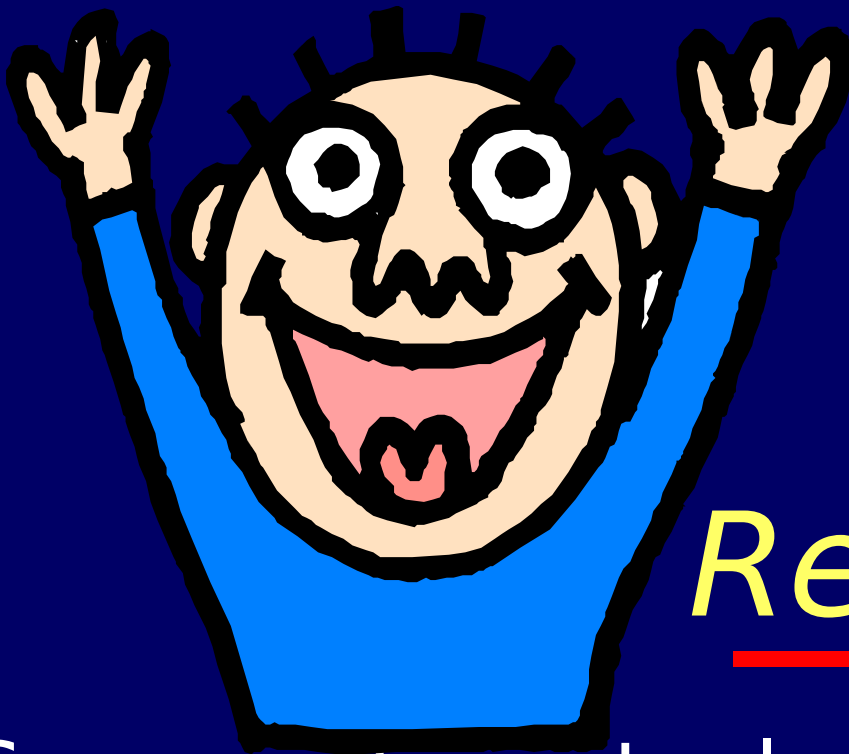
An employee whose duties
affect the financial interests of
a
friend, relative, etc.,
shall comply with
this process



Determination

- ◆ Would the circumstances cause a reasonable person with knowledge of the relevant facts to question my impartiality?





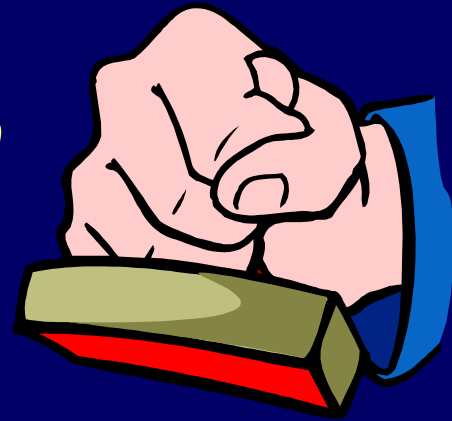
Resolution

Same as for actual conflict situations,
plus authorization by agency designee
that employee's participation
outweighs concerns over impartiality



Agency Authorization

5 C.F.R 2635.502(d)



- ◆ Nature of relationship
- ◆ Effect on person's financial interest
- ◆ Nature & importance of employee role
- ◆ Sensitivity of the matter
- ◆ Difficulty of reassigning the matter
- ◆ Adjustments to employee's duties

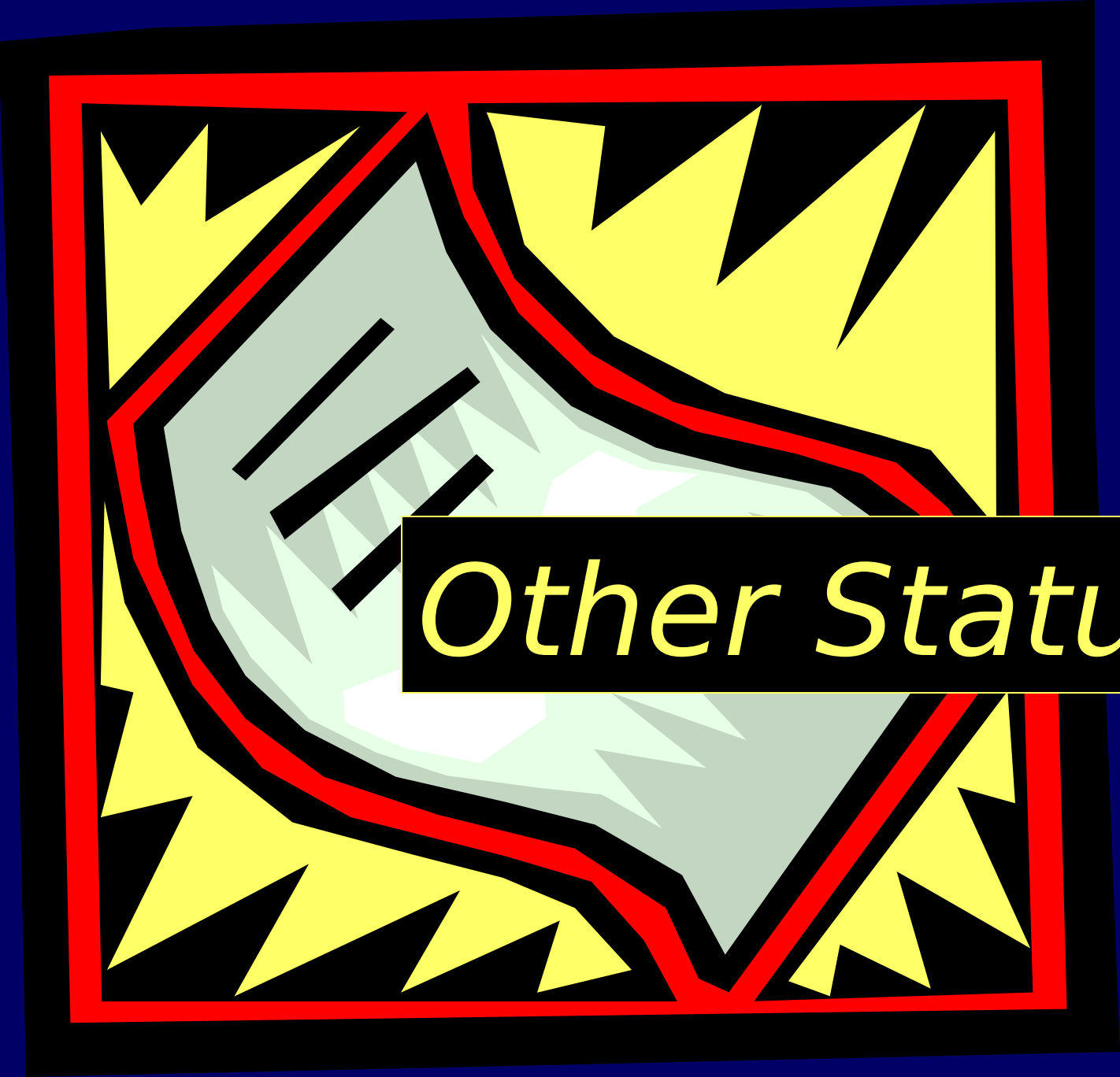




Extraordinary Payments from ~~Former Employer~~

- ◆ Disqualified for 2 years
- ◆ Extraordinary if value is greater than \$10,000 & not part of standard benefits plan
- ◆ Waiver of disqualification by agency head





Other Statutes





Bribery: *18 U.S.C. 201*

Crime to corruptly give, offer or
promise anything of value
directly or indirectly to a public
official with intent to influence
any official act or the
commission of fraud



Bribery: *18 U.S.C. 201*

*Public Official Can Include Those
Who Are Not Federal Employees*

- ◆ Includes enlisted personnel
- ◆ Includes support contractors



Bribery Elements

- ◆ Offender acted “corruptly” (“willfully”)
- ◆ Offender acted with intent to influence
 - Actual or intended quid pro quo



Lesser Included Offense -- Unlawful Gratuities 18 U.S.C. 201(c)

- ◆ Varying degrees of same conduct
- ◆ Primary difference between bribes & gratuities - intent to influence
- ◆ 1989 Ethics Reform Act gave OGE authority to define exceptions
- ◆ See U.S. v. Sun-Diamond Growers of California



18 U.S.C. 203
Prohibition Against Private
Compensation for Services
Before Govt Agencies

Officers or employees may not
demand, seek or receive
compensation for any
representational services . . .

-
- ◆ In relation to a particular matter
 - ◆ In which the U.S. is a party or has a direct & substantial interest
 - ◆ Exceptions: SGEs, executors, retirees
-





18 U.S.C. 205
Prohibitions Against
Representing Others in
Claims Against & in
Other Matters Affecting the U.S.

- ◆ Includes virtually any matter
- ◆ Exceptions . . .



-
- SGEs
 - Federal personnel matters
 - Fiduciaries of family members or estates
 - Statements under oath
 - Non-profit organizations if majority of members are current officers or employees of US or DC
-





Other Statutes *18 U.S.C. 207*

Post-Government Employment Restrictions



18 U.S.C. 209
Improper Supplementation
of Salary

Govt officials will tend to show
favoritism to their paymasters
even in the absence of any
specific quid pro quo



Other Statutes
18 U.S.C. 209
Improper Supplementation
of Salary

Must demonstrate that the
payment was made
specifically for the officer or
employee's services as such
an offer or employee



Other Statutes
18 U.S.C. 209
Improper Supplementation
of Salary

Recurring issue:

Payments to new Federal
employees by former
private employers



41 U.S.C. 423

The Procurement Integrity Act

If an agency official ... participating personally & substantially in a ... procurement for a contract in excess or the simplified acquisition threshold contacts or is contacted by ... a bidder or offeror ... regarding possible non-Federal employment, the official shall . . .

-
- ◆ Report the contact in writing
 - ◆ Reject possibility of employment
 - ◆ Disqualify himself from further participation
-





41 U.S.C. 423

The Procurement Integrity

Act

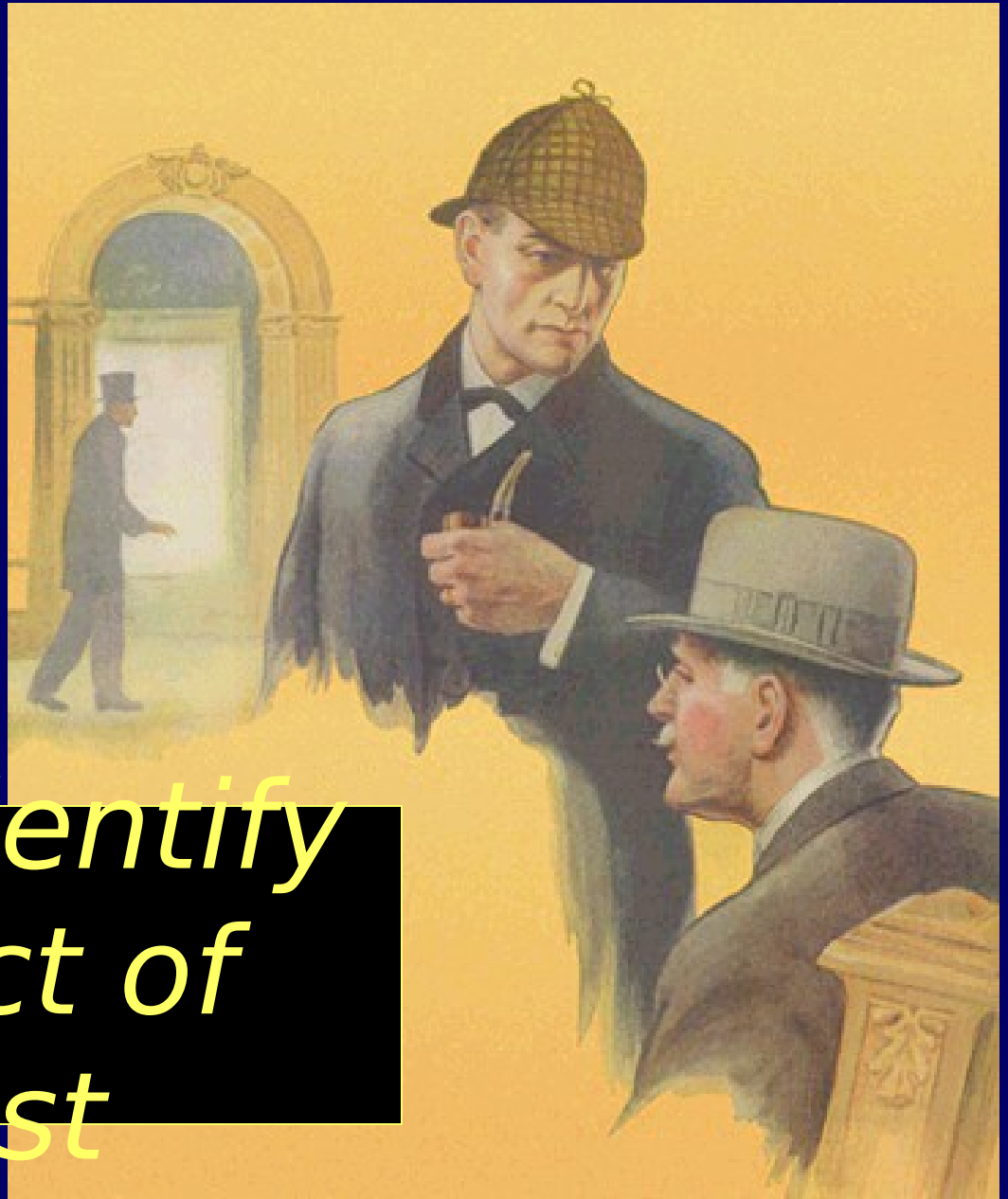
- ◆ If a Federal official intends to make a contact, he must submit written notice of disqualification to:
 - HCA
 - Source Selection Authority
 - Contracting Officer

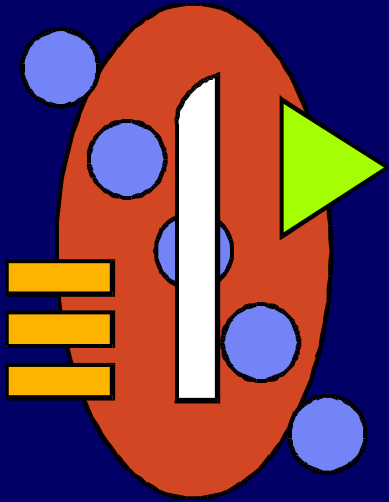


Helpful Hints



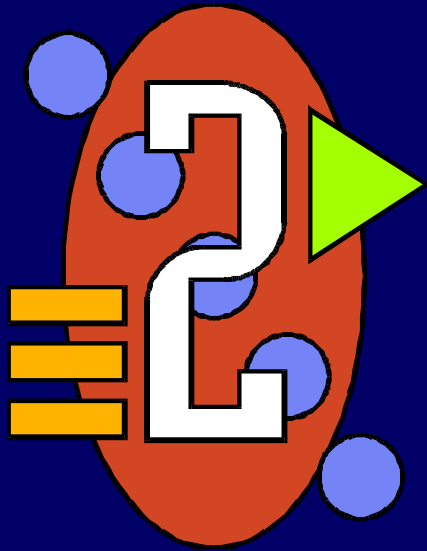
*How do I identify
a Conflict of
Interest*





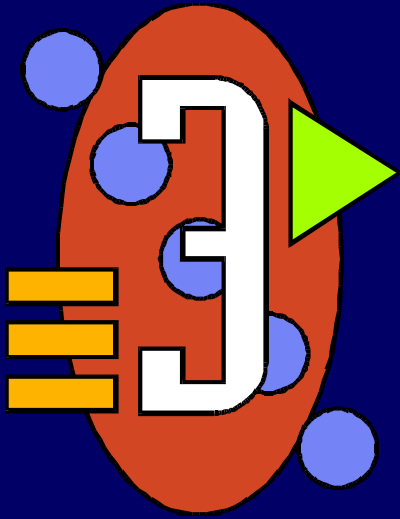
Financial Disclosure Reports





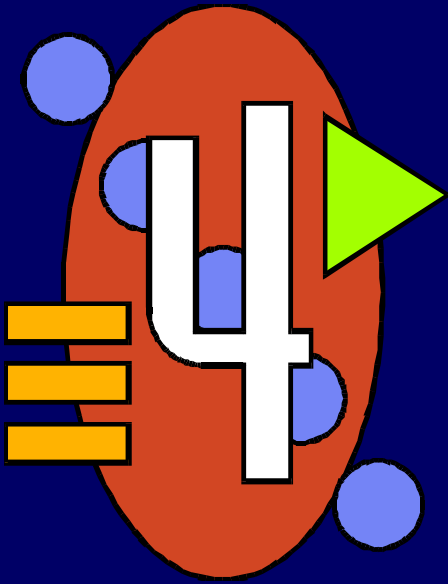
Training (briefings for procurement boards)





Frequent interaction with supervisors





Know your client

